

HOUSE BILL 3895

By Marrero

AN ACT to create a special committee to study equal access to justice and other implications of death penalty trials during the period of a moratorium on executions.

WHEREAS, the general assembly of the state of Tennessee recognizes the value of each person's life and the need to protect that life whenever possible; and

WHEREAS, the state should exercise the utmost care to protect its residents' lives from homicide, accident, and unjust termination by the state; and

WHEREAS, significant numbers of Tennesseans maintain that inadequate representation, economic status, race, judicial error, prosecutorial misconduct or other factors may deny some defendants the right to adequate representation or a fair trial in capital cases; and

WHEREAS, new methods and technologies have been developed for determining more precisely the guilt or innocence of the accused in capital crimes; and

WHEREAS, the execution of an innocent person by the state of Tennessee would be an irreversible injustice; and

WHEREAS, the general assembly desires to ensure a system of justice which is impartial; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. There is created a special committee to study access to justice and other implications of death penalty trials in the state of Tennessee. The committee shall be known as the "Death Penalty Fairness Study Committee," and shall be referred to in this act as "the committee."

SECTION 2. The committee is charged to study capital punishment in the state of Tennessee and to make recommendations designed to guarantee that, in its application and administration, capital punishment in Tennessee is free from bias and error. To that end, the committee shall, among other things, review the American Bar Association Section of Individual Rights and Responsibilities report entitled “Death Without Justice: A Guide for Examining the Administration of the Death Penalty in the United States,” the Constitution Project report entitled “Mandatory Justice: Eighteen Reforms to the Death Penalty,” and other nonpartisan, academic, or government inquiries into the administration of capital punishment at state and national levels.

SECTION 3. The committee is charged to study, receive testimony, deliberate upon and make recommendations for public policy designed to guarantee fairness and accuracy in the application and administration of capital punishment. The committee’s recommendations shall address, but not be limited to, the following:

- (1) The presence of innocent persons on death row in Tennessee.
- (2) The adequacy of counsel in all stages of capital cases, and the sufficiency of guidelines for appointment, training, and performance of such counsel;
- (3) A comparison of the costs associated with death sentences and the costs associated with sentences of life in prison without the possibility of parole;
- (4) Jurisdictional (geographic) disparities in the imposition of the death penalty;
- (5) Socioeconomic disparities in the imposition of the death penalty;
- (6) The risk of innocent people being executed;
- (7) Prosecutorial misconduct or judicial error as a factor in the imposition of the death penalty;

(8) Whether mentally ill persons constitute a disproportionate number of those on death row, what criteria should be used in judging the level of illness involved, and whether or not the mentally ill should be executed;

(9) Racial disparities and any disproportionate impact of race upon any aspect of capital case proceedings;

(10) The rate of error in the application of death sentences as reflected in death sentences being overturned on appeal, and what percentage of those convictions or sentences overturned result in a sentence of less than death upon retrial or resentencing;

(11) The process for judicial review of the merits of claims in state post-conviction and federal habeas corpus proceedings;

(12) The adequacy of investigative support afforded the accused in capital cases;

(13) The adequacy of the instructions to capital juries, especially in regards to the jurors' ability to understand applicable law, including alternative sentences; and

(14) Evolving standards of decency regarding state executions.

SECTION 4. The committee shall consist of fifteen (15) members, as follows: two (2) members of the senate including at least one member of the judiciary committee, appointed by the speaker of the senate; two (2) members of the house of representatives including at least one member of the judiciary committee, appointed by the speaker of the house of representatives; two (2) persons appointed by the governor; one (1) representative of the attorney general and reporter; one (1) representative of the Tennessee Bar Association; one (1) representative of the Tennessee Association of Criminal Defense Lawyers; one (1) representative of the district attorneys general conference; one (1) representative of the district public defenders conference; one (1) representative of the office of the post-conviction

defender; one (1) representative of the Tennessee Coalition for Mental Health and Substance Abuse Services; one (1) representative of Murder Victims' Families for Human Rights who is a resident of Tennessee; and one (1) representative of You Have the Power...Know How to Use It, Inc.

The committee shall be convened by the legislative member with the most years of continuous legislative service, and, at its organizational meeting, shall elect from the legislative membership a chair, vice-chair and such other officers as it may deem necessary. Members of the committee shall serve without compensation, except that any member of the committee who is not a state employee shall be reimbursed for all travel expenses incurred as a result of his or her duties with the committee in accordance with the provision of the comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general.

SECTION 5. The committee shall report its findings and recommendations to the governor and the general assembly no later than three (3) years following the effective date of this act. On the date that the report is made, the committee shall cease to exist and this act shall be repealed.

SECTION 6. There shall be a three (3) year moratorium preventing execution of any person in the state of Tennessee beginning on the effective date of this act. During the moratorium period, new and ongoing capital prosecutions, appeals, and other criminal actions shall not be affected by the moratorium. It is the intent of the general assembly that the moratorium on executions shall not end until the general assembly has received the recommendations of the committee.

SECTION 7. This act shall take effect upon becoming a law, the public welfare requiring it.